

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

BETHLEHEM STEEL CORPORATION

Employer-Petitioner

and

Case 5-UC-336

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC

Union

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Union is a labor organization within the meaning of the Act and is recognized by the Employer as the collective-bargaining representative for certain employees in the unit set forth below.
4. The Employer-Petitioner seeks by its unit clarification petition to exclude approximately 21 product marketing employees from its existing contractual bargaining unit of office and technical employees (hereinafter the O&T Unit) at its Sparrows Point, Maryland facility. The employee classifications sought to be excluded are: product marketing manager (also called product manager), general manager-tin product sales and marketing, sales and marketing manager-special products, area manager, product marketing/technical service manager-tin, senior product marketing representative, product marketing representative, product applications consultant and secretary (hereinafter, collectively, the product marketing employees).

## **PROCEDURAL HISTORY**

In 1985, the Board certified in case 5-RC-12374, the following unit of office and technical employees (hereinafter the O&T Unit) at the Employer's Sparrows Point facility:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

On August 29, 1991, the undersigned issued a Decision and Order in Cases 5-UC-302 and 5-UC-303 which clarified the O&T Unit to specifically exclude "customer service representatives, telephone operators and administrative assistants." On November 21, 1991, the Board denied the Union's request for review of that Decision.

At the hearing, the Employer moved to amend the unit description to incorporate the Board's decision in 5-UC-302 and 5-UC-303 (in italics) and to denote the job classifications it seeks to exclude through this unit clarification proceeding (underlined) to read as follows:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), *customer service representatives, telephone operators, administrative assistants, product marketing employees*, confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

Between August 1, 1993 and November, 1993, the Employer reorganized certain operations which caused some product marketing job functions to relocate from the Employer's Bethlehem, Pennsylvania headquarters to its Sparrows Point facility.<sup>1</sup> At issue in this proceeding are these product marketing jobs which moved to Sparrows Point. These positions were not part of any bargaining unit at headquarters. On November 1, 1993, the Union filed grievances asserting that the product marketing representatives, the product application consultant, and the secretaries were performing unit work.

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<sup>1</sup> Similar jobs moved to the Employer's facility at Burns Harbor, Indiana. Burns Harbor is not at issue in this proceeding.

On May 17, 1995, the Employer filed with Region 5 a charge in case 5-CB-8102 alleging the Union was violating Section 8(b)(3) of the Act by processing to arbitration grievances asserting that customer service account representatives and telephone operators, the positions subject to the Decision in 5-UC-302, should be accreted to the O&T unit. In those grievances, the Union contended it would show that changed circumstances resulted in the positions performing unit work. The undersigned dismissed the charge on June 23, 1995. An appeal of the dismissal was sustained by the General Counsel on September 7, 1995 and complaint issued on September 25.

On June 23, 1995, the Employer filed 5-UC-334, seeking to reaffirm the Board's Decision in 5-UC-302 excluding from the O&T Unit the customer service representatives and the telephone operators. On July 27, 1995, the undersigned suspended processing that petition pending the outcome of the arbitration proceeding. The Employer filed a Request for Review which was opposed by the Union and granted by the Board on November 2, 1995. The customer service and telephone operator grievances were before the arbitrator on June 27, 28 and 29 and on August 15 and 16, 1995. On November 9, 1995, the arbitrator granted the Employer's request to hold in abeyance a decision on the grievances pending a Regional determination on the petition in Case 5-UC-334.

On July 31, 1995, the Employer filed with Region 5 a petition in Case 5-UC-336 seeking to clarify the O&T Unit by excluding "all product marketing employees." The Union asked that 5-UC-334 and 5-UC-336 be consolidated, postponing hearing until the arbitrator's decision in 5-UC-334. The undersigned denied the Union's request and 5-UC-336 was heard on September 26 and 27, 1995. A hearing was conducted in 5-UC-334 on March 25, 1996. On May 22, 1996, in separate decisions, the undersigned dismissed both petitions in 5-UC-334 and 5-UC-336 as untimely.

On September 27, 1999, the Board issued separate decisions in 5-UC-334 and 5-UC-336.<sup>2</sup> In 5-UC-334, the Board dismissed the petition by finding that the customer service employees at issue there had been historically excluded from the bargaining unit represented by the Union, and since no party had established that recent and substantial changes had occurred to the disputed classifications, the Employer's claims were not appropriately resolved in a unit clarification proceeding. In determining that the disputed classifications had not undergone recent, substantial changes, the Board noted that while "[t]hese relocated customer service employees have more contact with unit employees than they did before their relocation, since they now work side-by-side with them under a team concept ... the customer service employees retain basically the same job function as they had previously, with separate supervision and little temporary interchange with unit employees."<sup>3</sup>

In the instant case, the Board reversed the undersigned's decision that the petition was untimely. The Board determined that the petition did not seek to modify the bargaining unit, but

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<sup>2</sup> 329 NLRB No. 32 (Sept. 27, 1999) and 329 NLRB No. 31 (Sept. 27, 1999), respectively.

<sup>3</sup> In a concurring opinion, Members Hurtgen and Brame stated they "would entertain the petition, and on the merits, [they] would continue the historic exclusion of the classification contested herein" for the same reasons cited by their colleagues.

rather sought to have the Board determine the placement of classifications which were not expressly covered in the parties' contract, which had not existed at Sparrows Point at the time the parties executed their contract, and which had been in dispute since the relocation. Thus, the Board remanded the case to the undersigned for a determination on the merits.

### **POSITIONS OF THE PARTIES**

The Employer contends that all product marketing employees should be excluded from the O&T Unit because they lack sufficient community of interest with unit members. Alternatively, the Employer asserts that the managers in product marketing - product marketing manager, general manager-tin product sales and marketing, sales and marketing manager-special products, area manager, product marketing/technical service manager-tin - should be excluded from the unit as supervisors and/or managerial employees. Further, the Employer asserts that the product applications consultant should be excluded from the unit on the additional basis that the position is a professional employee and that the secretaries should be excluded as confidential employees.

The Union asserts that the product marketing employees, except for the product marketing managers,<sup>4</sup> constitute an accretion to the unit because they share a substantial community of interest with unit employees and that they are not excludable as either confidential or managerial employees.

### **UNDISPUTED FACTS**

The O&T Unit, certified since 1985, includes some 260 employees. The Unit has been covered continuously by the terms of a collective-bargaining agreement since shortly after certification. The current agreement is effective by its terms August 1, 1993 through August 1, 1999. The unit description in the current contract reads:

All non-exempt salaried office clerical Employees, non-exempt salaried plant clerical Employees and non-exempt salaried technical Employees employed by the Employer at its Sparrows Point, Maryland, facilities; but excluding all shipyard employees, hourly paid production and maintenance employees, all employees in the General Manager and Industrial Engineering Departments, all programmers, project/program librarians, and key entry operators in the Information Services Department, managerial trainees (including loopers, interim loopers, and technical trainees), confidential employees, professional employees, guards and supervisors as defined in the Act, and all contractor personnel.

On January 18, 1993, the Employer issued a press release announcing, among other things, plans to establish the "Bethlehem Sparrows Point Division" and the concomitant

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<sup>4</sup> In its post-hearing brief, the Union stated that it does not oppose a determination that the product marketing managers are to be excluded as supervisors and/or managerial employees.

relocation from its Bethlehem, Pennsylvania home office to its Sparrows Point, Maryland plant, job functions performed by the product marketing employees. At the time of the press release the parties were approaching the expiration date of a collective-bargaining agreement which, among other things, contained the unit description set forth above. Contract negotiations pertaining to the existing O&T unit were conducted during June and July 1993. The product marketing employees were relocated to Sparrows Point from August through November, 1993.

Craig Dolan, the Employer's supervisor of labor relations and Wayne Harlow, president of the Union's Local 9116, testified that there was discussion during contract negotiations in summer 1993 regarding unit placement of product marketing employees. The parties did not reach agreement. On November 11, 1993, following execution of the contract, the Union filed grievances contending that work performed by the following relocated employees was O&T Unit work: metal application engineer,<sup>5</sup> secretaries, product application consultant, administrative coordinator and coordinator, (referred to currently and in this proceeding as product marketing representative.) The Union filed the grievances pursuant to Article II, - Application of Agreement, Sec. 1(c), 02.01.03(c) which provides, in pertinent part:

When Management establishes a new or changed job in a Plant so that duties involving a significant amount of clerical bargaining unit work which is performed on a job within the bargaining unit (or, in the case of new work, would be performed on such job) are combined with duties not normally performed on a job within the bargaining unit, the resulting job in the Plant shall be considered as within the bargaining unit.

The Employer filed the petition in this case on July 31, 1995. In August 1995, the Union requested arbitration for grievances S912 and S917 which concern the product marketing representatives and the secretaries, respectively.

### **THE EMPLOYER'S OPERATIONS**

The disputed classifications are part of the Employer's Sparrows Point commercial division. The commercial division is comprised of five main product departments: hot and cold rolled sheet products, coated sheet products, plate products, tin products and special products. From its Sparrows Point facility, the Employer produces and sells the listed products. All products except for special products also may be outsourced to a contractor for "outside processing".

The employees, unit and non-unit, are located throughout the Employer's main office building at Sparrows Point facility by product, not by job classification. For example, one wing of the first floor houses the hot and cold roll products department. Located in that particular area are 6 non-unit employees from product marketing, including the product manager, 7 non-unit employees from customer service, 3 unit employees from quality assurance, and 1 unit employee from production scheduling. Despite their close proximity, each job classification is separately

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<sup>5</sup> This position no longer exists at the Employer's Sparrows Point facility.

supervised. Thus, no product marketing employees share supervision with any other employees, including O&T unit members.

The Employer's sales process involves a team concept which was implemented in 1993. A result of the team concept has been a daily increase in personal, direct contact between employees, unit and non-unit, who are involved in the sales process, including those employees in customer service, product marketing (hereinafter sometimes marketing), quality assurance and production scheduling. Quality assurance and production scheduling are comprised of 26 and 71 O&T unit employees, respectively. In general, a customer deals directly with field sales (hereinafter sometimes sales) to purchase a product, although customer service also places orders for customers. The customer's order then goes through product marketing for pricing. The actual negotiation of price with the customer is normally done by sales or customer service based on guidelines established by product marketing. After an order goes through marketing, discussions take place between marketing or customer service and quality assurance to ensure that the Employer can meet the customer's metallurgical needs. In other words, quality assurance is responsible for making sure the Employer can produce the product according to the customer's specifications. Then negotiations take place between marketing or customer service and production scheduling to ensure that the Employer can deliver the product on the date promised to the customer. Marketing also spends about 20-40% of the time in scheduling although its role is decreasing due to a new computer system called Rhythm.<sup>6</sup> Marketing's role in scheduling is to decide which customers' orders will get bumped in the case of an overload whereas production scheduling is responsible for scheduling the mill for production. Transportation may also be consulted by marketing regarding delivery target dates. The transportation department is also made up of O&T unit employees.

The record contains no evidence of any interchange between the product marketing employees and O&T unit employees. If a secretary in product marketing is absent, another product manager's secretary will fill in during his/her absence.

Hiring at the Sparrows Point facility is processed through an employment office which handles unit and non-unit personnel. The same work rules and standards of conduct apply to all employees, unit and non-unit. Further, O&T unit and non-unit employees share a cafeteria and restroom and parking facilities at Sparrows Point.

### **PRODUCT MARKETING EMPLOYEES**

Product managers head up each department except for tin which is headed up by a general manager. As discussed infra, the general manager of tin is equivalent to a product manager. Product managers are ultimately responsible for the marketing, sales, pricing and distribution of their product. They also oversee the area managers and product marketing representatives. In addition, product managers also coordinate all pricing and marketing sales functions nationally and guide the field sales group in their daily interaction with customers

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<sup>6</sup> Rhythm is a schedule compliance program that ensures that the Employer is accepting orders to meet customer's desires and scheduling those orders to meet delivery targets.

regarding pricing. Product managers also travel often to interact with customers, attend conventions and to participate in customer and company meetings. They conduct performance evaluations of area managers and secretaries. The evaluations of product marketing representatives are jointly done by product and area managers. Product and area managers also have input in selecting product marketing representatives. Only the product manager can discipline employees in his/her department.

Area managers are responsible for setting pricing and distribution guidelines on a daily basis, either by geographic area or product. Hot and cold sheet product manager Timothy Morrison testified that area managers serve as the front line connection to field sales. Area managers also travel often to visit customers and outside processors. As mentioned above, area managers also have input in the evaluations and selection decisions of product marketing representatives. However, the record is unclear as to the extent of their participation in making these decisions and the weight given to their input. The merit increases for product marketing representatives are directly tied to their performance evaluations.

Product marketing representatives, formerly known as coordinators, support marketing and sales activities within the commercial division. There is no functional difference between senior product marketing representatives and other product marketing representatives. Product marketing representatives serve as liaisons to field sales employees and work with them in establishing pricing. The price book for a product is developed by product marketing representatives by using cost of operations, knowledge of the market and knowledge of competitor prices. Sales goes through product marketing representatives or area managers to negotiate prices with a customer, although sometimes customers call marketing directly to negotiate price. Product marketing representatives can also discount a product without prior approval from the product or area managers. Discounts take a variety of forms and occur frequently. Morrison testified that such discount information is very confidential. Product marketing representatives are responsible for creating a price deviation report regarding the newly-negotiated price which explains how the new price was derived and ensures that the customer is billed properly. They also can decide independently whether the Employer will prepay for delivery of freight or to charge the customer on delivery. They also give input to distribution decisions although mainly product or area managers make those decisions. Product marketing representatives may also get involved in the Employer's "J-MICs" system, which is a computer program which analyzes a customer's production forecast and places orders for them, with its larger customers. However, mostly all J-MICs' accounts are handled by customer service. Product marketing representatives perform the same functions as before the relocation to the Sparrows Point facility.

A product application consultant is responsible for the technical aspects of marketing sheet products. This includes serving as commercial technical advisor to the Employer's research department and technical representative on business or special teams, writing marketing communication literature, answering technical questions from customers and contractors, assisting in the product knowledge training of field sales, marketing, customer service and production employees, and assisting in the training of field metallurgical/engineers on the technical aspects of sheet products. The product application consultant also represents the Employer on technical committees of various industry, national and international associations.

At the time of the hearing, the Employer had one product application consultant, E.D. Melcher, who worked in coated sheet marketing. Melcher has master and bachelor degrees in metallurgical engineering.

Secretaries are responsible for general secretarial functions such as typing, filing, answering phones and distributing mail. They prepare and maintain confidential documents serving as budgets, performance appraisals, personnel records, any kind of disciplinary action, merit or salary increases and bonuses. Secretaries are located right outside the product manager's office. Every marketing department has a secretary except for special products. The secretaries never work outside of the commercial department and if one of them is absent, another product manager's secretary will fill in. Morrison also testified that secretaries have no reason to contact unit employees during the course of business. However, specification analyst George Kriss testified that the secretaries deliver information to his desk regarding meetings and sort mail and place it in a bin where he can retrieve it.

The tin products group, unlike the hot/cold, coated and plated departments, has its own sales force. The tin group is headed up by a general manager, who is the counterpart of the product manager in the other groups. M.T. Goedeke, III has the title of product marketing/technical service manager and functions as a sales manager. Tin also has two area managers that are located in Ohio and New York and who serve as salesmen. The two area managers report to Goedeke. Tin also has one senior product marketing representative whose duties are no different than the other product marketing representatives.

Special products is comprised of a sales and marketing manager and senior product marketing representative. They are responsible for selling defected or less than prime products to a secondary market, which comprise of companies that specialize in taking a bad product and turning it into a saleable one.

### **CUSTOMER SERVICE ACCOUNT REPRESENTATIVES**

Customer service account representatives (CSAR) are non-unit employees that are located in the Sparrows Point facility according to the product they service. CSARs can quote prices to customers and place orders for them directly or through field sales employees. They also have the ability to negotiate prices within a certain range of the book price. This price range is determined by the area managers and product marketing representatives. Field sales employees contact CSARs to check pricing, status of an order or to expedite an order. CSARs have responsibility for direct selling and for following up on an order after it has been placed. Morrison testified that CSARs work closely with product marketing representatives and production schedulers on a daily basis.

### **O&T UNIT EMPLOYEES**

Specification analysts are responsible for the quality assurance of the products. There is a specification analyst located in each of the product groups. There are a total of about five



specification analysts located at the Sparrows Point facility. Their primary function is to interpret and analyze orders and assure that the product being ordered will meet the customer's end use and is within the Employer's requirements. They also assign steel making practices, e.g. mill thickness, slab size, operating directives, to the orders before they go to the mill for production. Specification analysts receive customer inquiries or orders from the product marketing representatives or CSARs. Specification analysts discuss with product marketing representatives and CSARs whether the Employer can accept customer orders metallurgically. Specification analyst George Kriss testified that they spend about 25% of the day dealing with CSARs and product marketing representatives, 10-15% of which is solely with CSARs. He said that since the restructuring there has been more face-to-face contact with CSARs and product marketing representatives whereas before their communication was by phone or wire. Since 1993, Kriss testified that the length of contact between specification analysts and customer service or marketing has increased about 10-15%. When the Employer first restructured in 1993, Kriss said he attended meetings with product and area managers on a regular basis for a couple of months. However, at the time of the hearing, Kriss said he no longer attended meetings with marketing.

Production scheduling employs the following O&T unit classifications: schedule planner, schedule provider, process coordinator and order coordinator.

Schedule planners are responsible for production scheduling of the hot, cold and tin products. They insure that proper commodity loads are maintained for products and coordinate any entries or changes that are required to maintain the integrity of the order data. They determine whether a customer's order can fit in the necessary schedule so that the Employer can deliver the product by the customer's desired date. Schedule planners negotiate with marketing over what delivery date the Employer can commit to the customer. CSARs also talk with schedule planners after the order has been placed to follow the order and check that the schedule is being met. Schedule planners attend meetings with CSARs, area managers and product marketing representatives regarding facility loading and order entry because of the newly-implemented Rhythm system. They also work with area managers on a daily basis and communicate with quality assurance and production scheduling concerning any scheduling problems.

Schedule providers are unit employees responsible for production scheduling in the plate mills. Their job description indicates that they provide slabs and schedules from inventory and schedule hot charged material orders based on customer specifications and mill parameters to meet customer service demands. Schedule providers may reject or adjust customer orders and slab requirements to meet standards and update the system. They also initiate, coordinate or revised schedule plans.

Process coordinators are involved in the outside processing of products. Their responsibilities include coordinating and expediting the flow of the material through the process at the plant and at the outside processor. Process coordinators contact CSARs concerning any problems and occasionally receive phone calls from product marketing representatives regarding those issues.

Order coordinators are responsible for expediting all orders at the plant. CSARs must go through order coordinators for expediting orders. Order coordinator and Local Union president Wayne Harlow testified that product marketing representatives are involved in expediting orders to a lesser degree than CSARs.

### **WAGES, BENEFITS AND HOURS**

O&T unit and non-unit employees are under different compensation, health insurance and pension plans. All product marketing employees are salaried except for the secretaries. In general, unit and non-unit employees work the same hours.

### **ANALYSIS AND CONCLUSION**

It is well established that “[t]he Board has followed a restrictive policy in finding accretion because it forecloses the employees’ basic right to select their bargaining representative.” *Towne Forde Sales*, 270 NLRB 311 (1984); see also *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969). In this regard, accretion is usually found appropriate only in situations where there is a newly created job position or substantial changes in existing job positions such that the employee in those job position do not possess an identity separate and distinct from employees in the existing unit. *United Parcel Service*, 303 NLRB 326 (1991). Here, the product marketing employees do not constitute a newly created job position. Nor are their job functions so dramatically changed such that they no longer constitute a group of employees that can be viewed as separate and distinct from the existing unit.

The only apparent change since the relocation is that the product marketing employees have more contact with unit employees, since they now work in close proximity with them under a team concept, rather than communicating with them by phone or wire as they did before. This regular contact, by itself, is an insufficient basis for accretion. See, e.g., *Super Valu Stores*, 283 NLRB 134 (1987). Instead, the more traditionally decisive factors of no employee interchange and separate supervision weigh in favor of clarifying the unit by excluding the product marketing employees. See *Mac Towing*, 262 NLRB 1331 (1982); *Save-It Discount Foods*, 263 NLRB 689 (1982); *Renzetti’s Market*, 238 NLRB 174, 175 (1978).

Based on the foregoing and the record as a whole, the unit will be clarified to exclude the product marketing employees from the existing O&T unit. In view of that determination, it is unnecessary to decide whether the managers in product marketing are also supervisors and/or managerial employees, whether the product application consultant is also a professional employee and whether the secretaries are also confidential employees under the Act.

**ORDER**

IT IS HEREBY ORDERED, the Employer-Petitioner's bargaining unit, as set forth in the parties' currently effective collective-bargaining agreement, is clarified to exclude product marketing employees employed by the Employer at its Sparrows Point, Maryland facilities.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by March 28, 2000.

Dated March 14, 2000

at Baltimore, Maryland

/s/ LOUIS J. D'AMICO  
Regional Director, Region 5

